

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MEDTOX SCIENTIFIC, INC.,

Civil No. 06-3546 (JRT/FLN)

Plaintiff,

v.

**TEMPORARY RESTRAINING
ORDER**

TAMARAC MEDICAL, INC. and
ESCA TECH, INC.,

Defendants.

Lora Esch Mitchell and Darren B. Schwiebert, **FREDRIKSON & BYRON, P.A.**, 200 South Sixth Street, #4000, Minneapolis, MN 55402-1425, for plaintiff.

Eric H. Chadwick, **PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.**, 4800 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-2100 and John P. Fredrickson,¹ **BOYLE, FREDRICKSON, NEWHOLM, STEIN & GRATZ, S.C.**, 250 Plaza Building, Suite 1030, 250 East Wisconsin Avenue, Milwaukee, WI, for defendant ESCA Tech, Inc.

Melvin B. Sabey,² **KUTAK ROCK, L.L.P.**, Suite 3100, 1801 California Street, Denver, Colorado, 80202-2658, for defendant Tamarac Medical, Inc.

Plaintiff MEDTOX Scientific, Inc. has requested a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b). The Court held a telephone hearing on September 13, 2006, at which the parties were represented by counsel. The Court considered the complaint, the motion, and other written submissions of the parties, in addition to the arguments of the parties. For the reasons discussed during the telephone hearing, the Court grants the following temporary restraining order intended to maintain

¹ Counsel's motion for admission pro hac vice is pending.

² Counsel's motion for admission pro hac vice is pending.

the status quo until the Court can consider plaintiff's motion following full briefing and a hearing.

ORDER

Based on the foregoing, all the records, files, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Motion for a Temporary Restraining Order [Docket No. 3] is **GRANTED in part**.
2. Defendants are enjoined from stating or implying that ESCA Tech, Inc.'s pending patent application gives defendants the right to exclude MEDTOX Scientific from marketing or selling competing products;
3. In accordance with Rule 65(c) of the Federal Rules of Civil Procedure, plaintiff shall post a bond with the Clerk in the amount of \$5,000.00 for the payment of such costs and damages as may be incurred or suffered by defendants in the event defendants are found to have been wrongfully enjoined or restrained.
4. This Order shall go into effect upon the posting of the bond, and shall remain in effect until further order of this Court granting or denying a preliminary injunction or dissolving this Temporary Restraining Order.
5. Defendants' response to the motion for a temporary restraining order is due by October 13, 2006. Plaintiff's reply, if any, is due by October 27, 2006. Defendants may seek leave to file a sur-reply if new issues are raised by plaintiff's reply. Counsel shall contact Jenny Beck, calendar clerk to Judge Tunheim, to schedule a hearing on the motion, which will be considered as a motion for a preliminary injunction.

DATED: September 14, 2006
at Minneapolis, Minnesota.

s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge